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New Jersey Propane Gas Association

IN RE PETITION CONCERNING THE  
APPLICABILITY OF THE ONE CALL  
DAMAGE PREVENTION SYSTEM  
TO THE NEW JERSEY PROPANE  
GAS INDUSTRY

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

BPU Dkt. No. GO02100732

**CERTIFICATION OF MICHAEL G. MERRILL**

I, Michael G. Merrill, do hereby certify as follows:

1. I am the Second Vice President of the New Jersey Propane Gas Association ("Association") as well as the Chairman of the Legislative/Public Affairs Committee of the Association. I have full authority to execute this Certification on behalf of the Association.
2. The Association has served the New Jersey propane industry for more than 50 years. It is a non-profit organization with offices located at 1 AAA Drive, Suite 102, Trenton, New Jersey. It represents retail propane companies in the State and has over 111 members. The Association's mission is to educate the public, the media, the industry and government officials as to the safety and efficiency of propane gas.
3. I am the Director of Safety/Training Services of Suburban Propane Partners, L.P. ("Suburban"). Suburban is a member of the Association. Suburban's corporate headquarters are located at One Suburban Plaza, 240 Route 10 West, Whippany, New Jersey. Suburban is the one of the largest marketers of propane in New Jersey.
4. On October 2, 2002, the Association filed its Verified Petition concerning the applicability of the One Call Damage Prevention System (the "One

Call System") to the propane gas industry. The Association believes deeply that the One Call System created by N.J.S.A. 48:2-73 et seq. (the "Act") was not intended to govern the propane industry, which operates in an entirely different manner and with markedly less risks to the public than the public utilities that the program was designed to address. See Verified Petition at Count 2. In fact, it should be noted that Michigan and Pennsylvania do not attempt to apply their one call systems to the propane industry.

5. While the Verified Petition thus seeks a declaration that the One Call System does not apply to the propane industry, this Certification focuses on a different issue and will document that the One Call System is failing to operate in a manner consistent with the statutes and regulations governing its operation. Specifically, although the One Call System is required to notify operators of underground facilities when there are excavations at sites where their facilities are located, 99% of all notices received by propane providers involve properties where they have no propane facility.
6. This gross and systemic failure places an extraordinary financial and administrative burden on propane providers, who must investigate hundreds upon hundreds of false notices to find those few properly directed to them and who must pay thousands of dollars in fees for notifications at sites where they have no facilities. The Association has been and remains committed to working with its members and government officials to resolve these problems, but has tirelessly discussed these issues with Board of Public Utilities ("BPU") staff during the past two years without achieving a successful resolution.
7. As recognized by the Act and its implementing regulations, in order to operate successfully, the One Call System must function on a site specific basis. That way, the specific sites where excavations are being undertaken can be matched with those companies that maintain underground facilities at the dig sites.

8. Thus, under the Act, an excavator must notify the One Call System of its intent to engage in excavation or demolition and is required to provide "the site specific location" of its proposed activities. N.J.S.A. 48:2-82(b)(4) (emphasis added). "Site" is defined by the Act as:

The specific place where excavation work is performed and shall be identified by street address referenced to the nearest intersecting street and sub-division name, if applicable, as well as by lot and block number, if available and by kilometer or mile marker for railways. N.J.S.A. 48:2-75 (emphasis added).

9. Consistent with this statutory requirement, the BPU has adopted regulations containing an identical definition of "site". N.J.A.C. 14:2-2.1.
10. The BPU also followed this express statutory direction when issuing its "Request for Proposal To Operate The New Jersey 'One-Call Damage Prevention System'" ("RFP") on April 19, 1999. The definition of "site" within the RFP is identical in all material aspects to the definition found in the Act and regulations. See Certification of Julie Tattoni ("Tattoni Cert."). Exhibit A.
11. Thus, under the requirements of the RFP, when an excavator calls the One Call System, the customer service representative must obtain the street address of the proposed excavation site and must complete a Markout Request Form with this information. Id. at Exhibit A, Sec. 1.2.3(h)(1). After "accurately establish[ing] the location of the proposed excavation site," the customer service representative must then notify "all operators of underground facilities in the excavation area." Id. at Sec. 1.2.3(h)(4) and (5). The One Call System then issues a markout ticket to those operators. Id. at Attachment 2a.

12. When a markout ticket is issued to a propane provider, the provider must mark out the precise location of its underground facility at the excavation site. The cost of marking out the facility is borne by the propane provider.
13. In addition, the propane provider is charged a fee of \$.62 per markout ticket issued by One Call Systems, Inc. ("OCS"), the system operator, based upon OCS's approved tariff.
14. To allow OCS to match excavation sites with individual propane providers, Association members, including Suburban, have provided OCS with the street address of each location where the propane company provides services. See Tattoni Cert., Exhibit A, Sec. 1.6.3. Indeed, because Suburban was concerned that its customer list remain confidential, it entered into a Confidentiality Agreement with OCS before turning over the addresses of its customers. See Exhibit A.
15. Armed with the street addresses where excavations are to occur and the street addresses of each propane provider's customers, OCS should be able to issue markout tickets to each propane provider only when a proposed excavation is planned for one of its locations. Instead, Association members are flooded with markout tickets for addresses where they have no customers or facilities.
16. The volume of erroneous markout tickets issued by OCS is truly extraordinary. In the case of Suburban, OCS issued 32,063 markout tickets in 2002. However, only 197 - or a mere 0.6% -- resulted in a markout of a propane facility serviced by Suburban. See Exhibit B.
17. Suburban's experience with erroneous markout tickets issued by OCS is not unique and, in fact, is shared throughout the propane gas industry. For example, in 2002, OCS issued 19,131 tickets to H&H Propane, an Association member. Only 214 of these tickets resulted in actual markouts of a propane facility serviced by H&H, meaning that

98.9% of the markout tickets were issued in error. See Exhibit C. Likewise, another Association member, Eastern Propane, was issued 6,677 markout tickets by OCS in 2002. Only 187 (2.8%) resulted in a markout of a propane facility serviced by Eastern. See Exhibit D.

18. These statistics demonstrate the enormity of the problem being faced by propane providers: overall, 99% of the tickets issued to these propane companies are false alarms. Only 1% of the tickets were issued to a propane company with a customer at the site of the proposed excavation. In other words, 99 out of every 100 markout tickets received by a propane company are false alarms.
19. The constant receipt of markout tickets for properties where the propane companies do not have customers exacts a huge toll on Association members. Propane companies are overwhelmed by a blizzard of markout tickets and must carefully examine each markout ticket to ascertain whether it is one of the few markout tickets notifying of an excavation on a property of one of its propane customers. In the case of Suburban, it must sort through an average of over 600 tickets per week. Likewise, H&H must sort through over 360 tickets per week. A smaller company like Eastern must carefully review more than 125 markout tickets in an average week. The resulting administrative burden is considerable, especially given the size of the businesses in the propane industry and the fact that these businesses function in a competitive business environment far different from that of public utilities.
20. In addition, because propane providers must pay \$.62 for each markout ticket received from OCS whether correctly issued or not, propane providers are paying 100 times more to OCS than they should because of the 99% error rate. Using Suburban as an example once again, Suburban should have received 197 markout requests in 2002 and paid fees of \$122.14 to OCS; however, it received 32,063 markout tickets which, at \$.62

per ticket, would represent a charge of \$19,879.06.

21. In an attempt to minimize some of the administrative burden, several Association members including Suburban have been forced to enter into supplemental contracts with OCS for ticket screening services. Attached as Exhibit E is a true copy of Suburban's contract with OCS.
22. Under the terms of the contract, OCS will review the markout tickets issued to Suburban to determine whether Suburban has a propane facility at the designated dig site. For this service, OCS receives a fee of \$1.50 for each ticket OCS "clears". Ironically, the more erroneous tickets OCS issues to Suburban, the more money Suburban pays OCS.
23. Suburban paid OCS \$44,536.50 under this supplemental contract during 2002 to clear inappropriate tickets. While Suburban is forced to pay this additional fee to OCS, Suburban is able to avoid the even larger burden involved in using its own staff to sort from among over 600 markout tickets received in an average week to identify the three or four properties actually serviced by Suburban.
24. The Association has attempted, with limited success, to understand the extraordinary number of false alarms that its members have received from OCS. Part of the problem appears to be that markout tickets are issued to propane providers not when the street address of a dig site matches that of a member's customer, but when the dig site is in the same 1/8th mile square grid (and certain adjacent grids) as the customer's property. Another potential contributor to the 99% error rate is that OCS issues tickets to propane companies for excavations that occur in the public right-of-way even though no propane facility may be located in a public right-of-way.
25. Whatever the cause, it is clear that these false alarms are a problem that can be avoided: OCS has the street addresses of both the dig sites and

each propane company's customers and is capable of matching the two. Indeed, that is exactly one of the services performed by OCS under the supplemental contractual arrangement that it has entered with Suburban and others and for which the propane companies are forced to pay OCS an additional \$1.50 per ticket.

26. The grossly inefficient manner in which the One Call System issues markout requests to propane companies does not benefit the public and unfairly burdens the industry. The Association respectfully requests that the One Call System be operated according to the statutory and regulatory requirement to operate on a site specific basis and be required to issue markout notices to propane providers only when the street address of an excavation site matches the street address of a propane provider's customer.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

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MICHAEL G. MERRILL

Dated: